

### **REMARKS**

The pending Office Action addresses claims 1-41, however claims 7, 8, 11, 12, 19, 22, 23, 29, 32, 33, 40, and 41 are withdrawn from consideration. Remaining claims 1-6, 9, 10, 13-18, 20, 21, 24-28, 30, 31, and 34-39 stand rejected and reconsideration is respectfully requested.

#### ***Election/Restriction***

Applicants confirm election of claims 1-6, 9, 10, 13-18, 20, 21, 24-28, 30, 31, and 34-39. Claims 7, 8, 11, 12, 19, 22, 23, 29, 32, 33, 40, and 41 are withdrawn from consideration as being drawn to a non-elected invention.

#### ***Amendments to the Claims***

Applicants amend independent claims 1 and 13 to incorporate the language of dependent claims 9, 10, 20, 21, and in particular to recite a wedge-shaped porous tissue scaffold. Claims 9, 10, 20, and 21 are amended to remove the language added to independent claims 1 and 13.

Applicants also amend claims 24 and 34 to recite that the at least one pocket includes an opening formed in a sidewall of a tissue scaffold, and that native tissue surrounding the tissue scaffold abuts the opening in the at least one pocket to maintain the viable tissue therein. Support for this amendment can be found throughout the specification, for example at paragraph 31 of the published application.

Applicants cancel withdrawn claims 7, 8, 11, 12, 19, 22, 23, 29, 32, 33, 40, and 41, however Applicants reserve the right to pursue these claims in a divisional application.

No new matter is added.

#### ***Rejection Pursuant to 35 U.S.C. §102 over Kuslich***

Claims 1-3, 5, 6, 13-15, 17, 18, 24, 25, 27, 28, and 34-36 are rejected pursuant to 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 5,571,189 of Kuslich.

Independent claims 1 and 13 are amended to include the limitations in claims 9, 10, 20, and

21, thereby obviating the basis for this rejection. Accordingly, claims 1 and 13, as well as claims 2, 3, 5, 6, 14, 15, 17, and 18 which depend therefrom, distinguish over Kuslich and represent allowable subject matter.

Independent claims 24 and 34 are amended to recite a method for repairing defective tissue where a tissue scaffold is provided having at least one pocket formed therein including an opening formed in a sidewall of the tissue scaffold. The method includes implanting the tissue scaffold such that native tissue surrounding the tissue scaffold abuts the opening in the pocket to maintain the viable tissue therein. Kuslich does not teach or suggest a scaffold having a pocket with an opening that is implanted in a patient's body such that native tissue abuts the opening to maintain the viable tissue therein. Rather, Kuslich teaches an inflatable implant that is sealed after it is filled to "prevent egress of the fill material" when the implant is implanted. (See column 9, lines 37-39.) The implant therefore does not have an opening, and native tissue is not used to maintain the viable tissue within the implant. Thus, independent claims 24 and 34, as well as claims 25, 27, 28, 35, and 36 which depend therefrom, distinguish over Kuslich and represent allowable subject matter.

***Rejection Pursuant to 35 U.S.C. §102 over Yi***

Claims 1-6, 9, 10, 24-28, 30, and 31 are rejected pursuant to 35 U.S.C. §102(b) as being anticipated by U.S. Application No. 2002/150604 of Yi et al. ("Yi").

Independent claim 1 recites a wedge-shaped porous tissue scaffold. As the Examiner points out, Yi simply discloses a bioabsorbable bag which may be "any shape" and conformable to the size and shape of the application. The broad and general language of Yi is simply not sufficient to anticipate claim 1. Accordingly, amended claim 1, as well as claims 2-6, 9, and 10 which depend therefrom, distinguishes over Yi and represents allowable subject matter.

As discussed above in relation to Kuslich, independent claim 24 is amended to recite a method for repairing defective tissue where a tissue scaffold is provided having at least one pocket formed therein including an opening formed in a sidewall of the tissue scaffold. The method includes implanting the tissue scaffold such that native tissue surrounding the tissue scaffold abuts the opening in the pocket to maintain the viable tissue therein. Yi does not teach or suggest a

scaffold having a pocket with an opening that is implanted in a patient's body such that native tissue abuts the opening to maintain the viable tissue therein. Yi teaches a bioabsorbable bag made from two membranes that have been sealed together. After the bag is filled with a suitable substance, but prior to implanting, the bag opening is closed with a bioabsorbable suture. (See page 5, paragraphs 70-71.) Accordingly, independent claim 24, as well as claims 25-28, 30, and 31 which depend therefrom, distinguish over Yi and represent allowable subject matter.

***Rejection Pursuant to 35 U.S.C. §103***

Claims 13-18, 20, 21, and 34-39 are rejected pursuant to 35 U.S.C. §103(a) as being obvious over Yi. For the reasons discussed above, independent claims 13 and 34 distinguish over Yi and represent allowable subject matter. Dependent claims 14-18, 20, 21, and 35-39 therefore likewise distinguish over Yi at least because they depend from an allowable base claim.

***Conclusion***

In conclusion, Applicants submit that all claims are now in condition for allowance, and allowance thereof is respectfully requested. The Examiner is encouraged to telephone the undersigned attorney for Applicants if such communication is deemed to expedite prosecution of this application.

Respectfully submitted,

Date: February 8, 2007

Electronic Signature: /Lisa Adams/  
Lisa Adams, Reg. No. 44,238  
Attorney for Applicant(s)

Nutter McClennen & Fish LLP  
World Trade Center West  
155 Seaport Boulevard  
Boston, MA 02210  
Tel: (617)439-2550  
Fax: (617)310-9550